

Attorney Docket No.: J3747(C)
Serial No.: 10/592,921
Filed: September 14, 2006
Confirmation No.: 6265

REMARKS

By this Amendment, applicants have amended claim 1 to relate that, in addition to having surfactant system which consists of three specific recited components, the hair treatment composition of the invention consists essentially of (i) alkyl chain fatty material; (ii) 0.1 to 10% by wt of a conditioning oil for providing conditioning benefit to hair (page 12, line 6; page 7, lines 5-7) and selected from the group consisting of hydrocarbon oils, fatty esters, silicone oils and mixtures thereof (page 7, lines 13-15); (iii) optional hydrophobically modified clay (pages 17, lines 10-11); and (iv) water and minors to 100% by wt (page 26, last row of Table). Consistent with these changes, applicants have cancelled claims 7-9 without prejudice.

As described in further detail below, these amendments are intended to highlight that compositions of Parr require use of ascorbic acid (i.e. are not true hair care compositions as would be understood by one of ordinary skill in the art) and that no one of ordinary skill in the art truly would contemplate plucking out an imidazoline component taught in the context of cosmetic/dermatologic products (column 2, paragraph 0021) without any motive or rationale to do so.

As will also be discussed, even if the references were for some reason combined by chance, there would be no reason to combine with 2 specific cationics versus only 1. Further, to rebut any argument of prima facie obviousness, applicants have demonstrated the advantage of combining with two rather than 1.

More specifically, the Examiner continues to reject the claims over U.S. Publication No. 2002/0136771 to Parr ("Parr") in view of U.S. Patent No. 2003/0186834 to Pereira ("Pereira") arguing that it would be obvious to one of ordinary skill in the art to incorporate imidazoline quat taught by Pereira into

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compositions of Parr which disclose compositions containing cationic surfactant or surfactants.

First, applicants again note that a person of ordinary skill in the art would not really have had any motivation to place imidazoline quat component (of Pereira) into a reference (Parr) which relates primarily and foremost to a method of stabilizing ascorbic acid. It is not sufficient to say that imidazoline may be used in personal care products generally since this is true of any ingredient used in a personal care product. There is no recognition of a synergistic effect when combining imidazoline with two specific cationics. As noted, the Parr references is concerned with stabilizing ascorbic acid and there is no suggestion or teaching anywhere in the art that imidazoline may be used to help such stabilization.

Further, to emphasize that applicants' compositions are hair care compositions (e.g. in which ascorbic acid would not be used), applicants have amended the claim to recite the composition "consists essentially of" components which effectively exclude ascorbic acid.

Even more critically, however, even if it could be argued, that one would arbitrarily select the imidazoline of Pereira and place it in the composition of Parr;

- (1) contrary to what the Examiner says, there would have been no more reason to combine into compositions containing one cationic than into those containing two; and
- (2) applicants have demonstrated (rebutted any prima facie showing of obviousness) that combination with the two specified cationics of the invention has unexpected advantage over combination with one.

With regard to point (i), as applicants have previously noted, there are no examples in Parr where two cationics are used. Thus, even if "mixtures" are theoretically disclosed, what motivation would there be for one of ordinary skill to first arbitrarily select imidazoline from thousands of possible ingredients which could

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be selected (as the Examiner notes, one could select any ingredient which theoretically could be used in personal care product); and to then further combine with at least two cationics? Such selection is obvious only in hindsight.

To the extent the Examiner argues there is a prima facie showing of obviousness, this is specifically rebutted by the examples. Thus, although the Examiner implies there have been no unexpected results (see penultimate paragraph of Examiner's comments in continuation sheet attached to Advisory Action), this is not true.

Specifically, Example 1 versus Example A at page 26 of the specification demonstrates that use of two cationics in combination with imidazoline provide better conditioning (Example 1) than over one cationic in combination with imidazoline (Example A).

In summary, applicants maintain that there would have been no motivation to arbitrarily select one particular reference (Pereira), which discloses imidazoline, over any other of thousands upon thousands of references which disclose thousands upon thousands of components which might have been used in Parr. The fact that they are both personal product compositions defines a category so broad as to be meaningless, in the context of providing impetus or motivation.

Moreover, even if such were combined (which is not conceded) one still would not have obtained the subject invention because one would not have known to necessarily use in combination with two cationics. Further, applicants have provided evidence rebutting any showing of prima facie obviousness.

In view of the amendments and remarks above, it is respectfully requested that the Examiner withdraw all rejections of the claims and that the claims as amended be allowed.

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If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney kindly requests the Examiner to telephone at the number provided.

Respectfully submitted,

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